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PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER

Report of the Secretary-General

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I. INTRODUCTION

1. On 9 December 1991, the General Assembly adopted resolution 46/52, entitled "Progressive development of the principles and norms of international law relating to the new international economic order". In that resolution, the Assembly referred to the analytical study submitted to it at its thirty-ninth session by the United Nations Institute for Training and Research (UNITAR) (A/39/504/Add.1, annex III); considered that the impact on developing countries of the current international economic situation should be examined; decided to establish a working group of the Sixth Committee to develop the principles and norms of international law relating to the new international economic order; and called upon the Secretary-General to request Member States and competent international organizations to formulate their comments, in particular on the principles which they thought might be given priority attention by the working group, and to include their comments in a report to be submitted to the General Assembly at its forty-eighth session.

2. The Secretary-General accordingly addressed a note to the Governments of Member States and a letter to competent international organizations, both dated 27 February 1992, inviting them to communicate to him any comments that they might wish to send, pursuant to resolution 46/52.

3. The present report contains the replies received from Governments and international organizations as at 15 July 1993. Further replies on this item will be reproduced in addenda to the present report.

II. VIEWS AND COMMENTS SUBMITTED BY GOVERNMENTS

ARGENTINA

[Original: Spanish]

[13 April 1993]

In the view of the Argentine Government, the following principles should guide the activities of the working group that has been established pursuant to paragraph 3 of resolution 46/52:

A. General framework:

General Assembly resolution S-18/3 of 1 May 1990, which contains the Declaration on International Economic Cooperation, in particular the Revitalization of Economic Growth of the Developing Countries;

General Assembly resolution 45/199 of 21 December 1990, which contains the International Development Strategy for the Fourth United Nations Development Decade;

B. Specific points to be considered as principles by the working group:

Paragraphs 21 to 38 of resolution S-18/3, concerning commitments and policies for international development cooperation;

Paragraph 17 of General Assembly resolution 47/183 of 22 December 1992, relating to the elimination of protectionism, which reads:

> "Calls upon the international community to assist in promoting measures necessary for the revitalization of the development process in the developing countries, in pursuit of the objective of revitalizing international trade, sustained economic growth and development;"

Paragraph 126 of the Cartagena Commitment adopted by the United Nations Conference on Trade and Development at its eighth session, which sets as objectives for the international community the following:

> "(a) To halt and reverse protectionism in order to bring about further liberalization and expansion of world trade, to the benefit of all countries, in particular the developing countries;
>
> "(b) To provide for an equitable, secure, non-discriminatory and predictable international trading system;
>
> "(c) To facilitate the integration of all countries into the world economy and the international trading system;
>
> "(d) To ensure that environment and trade policies are mutually supportive, with a view to achieving sustainable development;
>
> "(e) To strengthen the international trading system through an early and balanced outcome of the Uruguay Round of multilateral trade negotiations."

IRAQ

[Original: Arabic]

[7 June 1993]

1. The Government of Iraq attaches considerable weight to the question of the development of the principles and norms of international law relating to the new international economic order, inasmuch as it is a question of exceptional importance in our current situation vis-à-vis the developing countries, which have striven and continue to strive for the establishment of a new international economic order that is more just and more in keeping with the needs of the times. Iraq, therefore, being one of the parties that have called for the creation of that order, supports the establishment of an international group of the Sixth Committee of the General Assembly to continue work on the development and improvement of those principles.

2. The deterioration of economic conditions in many countries of the world, the structural changes taking place in economic systems and international economic relations, the reneging on international commitments which the world is witnessing and the limited character of so-called multilateral negotiations, not to mention the unbalanced or improper application of the principles in question, all lend a new impetus and new importance to the work of such a group, not only for the study of the development of those principles, but also for the study of the question of the violations to which those principles are subject.

3. The principle that rules change with the times is a corollary to the notion of legislation keeping up with the times and it is therefore unacceptable and unreasonable for the international economic order to remain bound by norms and rules which were established back in the 1940s and the 1950s and imposed by a small group of States that emerged triumphant from the war, when many of today's States did not exist at that time or did not take part in the formulation of those principles and norms.

4. The earnest endeavours which were made during the 1970s to establish the international economic order on a new basis in keeping with the requirements imposed by the changes taking place in the world and led to the adoption of a number of resolutions and documents, the most outstanding of which are perhaps General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, resolution 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States, and resolution 3362 (S-VII) of 16 September 1975 on development and international economic cooperation, continue to constitute basic reference points for the establishment of the desired new international economic order if they have not been transformed into binding legal instruments and advanced along the road to sound and faithful implementation.

5. The principles dealt with in the above resolutions can, if given the proper legal form, bring about sovereign equality and cooperation among States.

6. One cannot ignore the fact that the international economic order is closely tied to two important questions, namely peace and security, without which no order or system, however sound, can bear fruit and serve the desired economic goals. For that reason, developments relating to the principles and norms of the new international economic order should stress the need for a commitment on the part of States to refrain from economic coercion and provocation leading to instability within States and from all practices that result in a loss of confidence in international economic relations and are not conducive to international economic security.

7. The discrepancies in the economic performance of States and in their levels of development render it necessary, when one takes up the question of the progressive development of principles and norms relating to the new international economic order, to take into account conditions in countries with low levels of development so as to guarantee preferential treatment that will help those countries overcome the obstacles to their development and catch up with the developed countries.

8. Because the developing countries have had to bear boundless economic and social costs owing to world economic crises that have had a far-reaching, devastating economic impact, it is imperative to arrive at international norms for world economic policy that will ease the burden of those costs for developing countries and help them find just solutions to world-economy-related problems especially in the monetary and financial areas.

9. For the international working group, establishing new norms or developing existing norms means operating in two fundamental directions. The first involves examining all rules and principles which are no longer in line with existing conditions, especially in the areas of transferring technology, opening markets to the flow of international trade, combating international monopolistic practices and creating appropriate executive formulas for the performance of international obligations and agreements. The other direction involves the formulation of new norms and principles to deal with new situations and developments.

10. In view of the foregoing, the Government of Iraq considers that the comments and conclusions contained in the study prepared by the United Nations Institute for Training and Research (UNITAR) and the decisions adopted by the international community can serve as a valuable source of inspiration for the working group, with the proviso that the group must at the same time consider the need to stress the following points:

(a) The principle of progressiveness in the development of principles and norms must not serve as a loophole or a pretext for procrastinating and obstructing the desired development process, especially since, as we have seen, the question of that development has remained a live issue on the floor of the United Nations from the mid-1970s to the present;

(b) All principles and norms must be fully present, and no norm must be made to predominate to the detriment of another. The principle of maintaining peace and security is in total conflict with policies aimed at the impoverishment and starvation of peoples, and economic coercion and attempts to bring to a halt the economic activity of a State are incompatible with the principles of economic and social cooperation laid down in Articles 55 and 56 of the Charter of the United Nations;

(c) The question of establishing and formulating principles and norms is a fundamental issue; however, it will not suffice unless the creation of suitable mechanisms for the implementation of those principles and norms is taken into account. In addition, it is essential to establish monitoring centres to assist in identifying violations and the improper application of such principles;

(d) Non-participation by any entity in decisions that directly affect it is tantamount to the nullification of its sovereignty and its right of self-determination. This is a grave matter that makes it incumbent on the working group to find appropriate ways and formulas that include not only the participation of that entity in the making of decisions which affect it, but also the balanced apportionment and distribution of authority;

(e) The principle of sovereign equality also means changing the voting procedures currently in force which are incompatible with that principle and

prejudicial to developing countries and their right to development, and this requires insisting on the principle of equality among States in international decision-making;

(f) The question of the creation of institutional forms for the performance of international commitments is a fundamental issue to which the group must devote its attention, inasmuch as such commitments remain meaningless undertakings so long as they do not assume the appropriate executive form;

(g) The equitable apportionment of common benefits is a principle that has been generally accepted in its broad lines, thus making it possible to extend the work to other areas. In this connection, we deem it necessary for the international working group to stress the rights of States to use the waters of international rivers by requiring any State, when exercising the right to use the waters of an international river within its region, to respect the rights of the other States concerned in respect of the waters of that river, not to impair those rights or the legitimate interests of other States and to consult with such other States, before carrying out its projects, with a view to ensuring the benefit of those waters for all riparian countries. The States concerned, moreover, must come to an agreement among themselves, in accordance with the principles and norms of international law, defining each State's share of the waters of international rivers and the standards of quality of those waters.

LESOTHO

[Original: English]

[8 April 1993]

The Government of the Kingdom of Lesotho wishes to see priority attention given by the working group of the Sixth Committee to the following four issues:

(a) The principle of solidarity;

(b) The principle relating to the duty to cooperate;

(c) The right to development;

(d) The feasibility of attaining a new international economic order in the light of the deteriorating economic conditions in developing countries and in particular such areas as the debt problem, the commodity issue, and so forth.

III. VIEWS AND COMMENTS SUBMITTED BY INTERNATIONAL ORGANIZATIONS

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

[Original: English]

[7 May 1993]

1. It may be noted that the Asian-African Legal Consultative Committee (AALOC) has been dealing with some of the crucial issues relating to the new international economic order in its annual sessions. AALOC, as an intergovernmental organization committed to the promotion and progressive development of international law, lays emphasis in all its activity on the primacy of legal principles for a just and equitable international order. It is needless to emphasize once again how important this basic tenet is for the developing countries of Asia and Africa.

2. The principle of "sovereign equality" of States should be highlighted in no uncertain terms at this juncture. In principle, the "sovereign equality" of States is given foremost application in all the transactions of the international community. However, there are many operational deficiencies in its application, especially while implementing norms relating to economic and trade law. International lawyers of developed countries consider that these operational deficiencies of international economic and trade law stem from policies which have limited national jurisdiction. For instance, trade-related negotiations in the General Agreement on Tariffs and Trade (GATT) forum have a possibility of bilateral application. Accordingly, "cross-retaliation" has become a part of the emerging economic order. In the process the "sovereign equality" of States is workable only in principle. A fresh look at such developments, for example, determination of the international economic order through retaliatory clauses in the national legislations, is very much essential in the light of the changing world order.

3. Accordingly, the following principles and norms of the new international economic order call for more emphasis and study. They are:

(a) The right of States to choose the model for their development;

(b) The right of States to choose the forms of organization of their foreign economic relations;

(c) The right of States to participate in subregional, regional and interregional cooperation;

(d) The delictual nature of measures of interference with the free exercise of the rights implicit in the principle of economic self-determination.

While reaffirming the crucial importance of these norms, it is a trifle difficult to outline their current applicability. This is because it is difficult to say how far countries with developing economies could maintain intact their external and internal sovereignty.

4. As it has been correctly pointed out "there is no room for disagreement as regards the broad enunciation of the principle [of permanent sovereignty over natural resources] in that it affirms general principles of international law, in particular those of sovereignty and territorial jurisdiction in their application ... to the natural wealth and resources of the State and to its economic domain in general". In the present context, the need for increasing the flow of foreign investment has been expressed by most of the countries. Foreign investment and utilization of resources are the two related and crucial issues. In view of the developmental priorities of States, how are these two aspects to be realized? This calls for a closer scrutiny as it decides the rate of flow of foreign investment. There are two other important factors that need examination in the light of foreign investment and resource utilization. They are: (a) internal stability and (b) preservation of the environment.

5. The question of "internal stability and its relation to the flow of foreign investment" is intrinsically linked essentially with political factors rather than legal factors. It should be emphasized that stable economic growth with a favourable external debt situation would be sine qua non for consistent and viable internal stability. This has been a noticeable factor in many of the Asian and African countries. Since these factors, as mentioned above, essentially fall outside the scope of work of the AALOC, we restrict our comments to the legally viable alternatives. Internally, a State may have the option to decide to which sector of its economy foreign investments should be channelled. However, the prevailing situation in the field of external debt shows that it is not easy to monitor such a flow. The external borrowing to meet the necessary investment in various sectors of the economy has to meet stringent conditions "imposed" by international agencies. These conditions decide the sectors to which borrowing should be channelled. They also monitor various aspects of the internal economic conditions of a borrowing country. The international legal viability of these conditions should be considered as it touches the norms of the new international economic order.

6. Environmental factors are assuming greater importance in the present circumstances. As mentioned earlier, each State has the right to choose the model for its development. The definition of "development" itself has been subjected to varied interpretation. However, there is near total unanimity as regards the need to ensure "sustainable development in relation to environment" as embodied in Agenda 21 of the United Nations Conference on Environment and Development. Without going into the evolution of this concept, it may be emphasized that the new international economic order should give additional weight to this factor. While deciding on the models of development, it is necessary to take into account the preservation of cultural identities of people living in different communities. This may not have an immediate economic value. But, in terms of "development", no specific model should be thrust on these communities. Long-term benefits of such a preservation of cultural identities should help in adapting new economic development models which in turn should lead to more meaningful and socially relevant models of development.

7. In addition to the above norms relating to the "preservation of environment, culture and models of development", the global community should take into account another important principle, namely, "the principle of the right of every State to benefit from science and technology". In recent times the areas relating to "technology transfer, industrial property, protection and

development and protection of frontier technologies such as computer, semiconductors, biotechnology, satellite broadcasting and so on", have been increasingly coming into the ambit of multilateral forums with a demand for more stringent regulations. Application of science and technology in the industrial sectors is more or less dominated by the private sector, the majority of them being multinational companies. The legal regimes which are emerging to regulate or to lay down broad principles for protecting these high technologies have shown the tendency to accommodate primarily the interests of developed countries. The reasons for this are obvious. At the same time, the question of preferential treatment to developing countries is also on the agenda. Despite this, trade-related aspects of goods and services in the GATT forum and the negotiation in its Uruguay Round have not resulted in many concessions to poor countries. Restructuring of these inequitable legal regimes to facilitate more accessible and environmentally viable technology transfer to poor countries calls for greater emphasis.

8. In the final analysis, there are two more crucial factors which call for greater consideration. The first is the "duty of all States to cooperate". International law has moved from the principle of coexistence to the principle of cooperation. The analytical study prepared by the United Nations Institute of Training and Research (UNITAR) (A/39/504/Add.1) on this aspect points out, "In contrast to abstention from interference that characterizes a scheme of coexistence, the cooperative scheme of law necessitates taking into account the actual situation of States and apportioning and adjusting their rights and obligations accordingly. Therefore, it needs more of an institutional infrastructure than mere self-regulatory mechanisms". It means that there is a general duty in international law to cooperate. Apart from that at the institutional level there are express obligations undertaken by the State. The consideration should move towards how effectively States find it obligatory to abide by this general principle of international law. Secondly, the utmost primacy of rule of law should be upheld while structuring the economic order. That, however, remains as one of the basic objectives of the new international economic order. The objectives of the new international economic order in the latter part of the 1970s were formulated against the backdrop of cold war. The legal principles, however, have remained unchanged in their substantive aspects even after the elimination of the cold war. The primacy of law in the application of any new order is deemed essential as it allows a just and equitable international society to emerge.

INTERNATIONAL LABOUR ORGANISATION

[Original: English]

[24 June 1993]

1. The International Labour Office considers this subject of great importance in the adaptation of the system of international law, and in particular of human rights and humanitarian law at the international level, to a changing world economic situation.

2. The focus for the interest of ILO in this subject is found in the fifth preambular paragraph of General Assembly resolution 46/52 of 9 December 1991 which reads:

> "Considering the close link that exists between the establishment of a just and equitable international economic order and the existence of an appropriate legal framework ...".

3. This principle reflects some of the fundamental principles of the ILO itself, and in particular the Declaration of Philadelphia, adopted in 1944 by the International Labour Conference and incorporated into the ILO Constitution. Particular attention is drawn to part II of the Declaration, reproducing the statement in the organization's original Constitution that "lasting peace can be established only if it is based on social justice".

4. It flows from this that the principles and norms of international law which relate to the new international economic order should be aimed at the attainment of social justice as their priority objective.

5. As is well known, the principal means of action of ILO since its inception in 1919 has been the formulation, adoption and implementation of international labour standards, particularly through its Conventions and Recommendations. These standards, adopted by the International Labour Conference, now make up an extensive body of international law, sometimes known as the International Labour Code, consisting at the end of 1992 of 173 Conventions and 180 Recommendations. The Conventions have attracted more than 5,600 ratifications - a very large acceptance by the international community of a complex body of common obligations and principles.

6. The objective of the standard-setting work of ILO has been the formulation of these rules of international law, and their acceptance and implementation by Governments, in cooperation and collaboration with their national organizations of employers and workers, the social partners which make up the ILO's constituents. Therefore, in examining the question of principles and norms of international law in this area, the working group established under General Assembly resolution 46/52 may wish to give preliminary consideration to whether it remains necessary to "develop" these principles and norms in all areas, and consider the extent to which the instruments adopted by the International Labour Conference do not already meet the need for establishing principles and norms in some areas at least, and in particular those concerning fundamental social policies. The ILO would of course be glad to discuss these issues with the working group at any time.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

[Original: French]

[23 April 1993]

The following UNESCO publications might prove to be useful for the consideration of the issue:

(1) Pour un nouvel ordre économique international, 1979, by Mohammed Bedjaoui, Judge of the International Court of Justice at The Hague. Despite its publication some time ago, this work remains timely because it raises and tries to resolve a number of questions that are still very much issues of the day.

Dealing with these various issues, the author in the first part of his work sketches an outline of the "international order of misfortune and the misfortune of the international order". In the second part, the author considers what would constitute "the international law of development and the development of international law";

(2) International Law: Achievements and Prospects, Mohammed Bedjaoui, general editor (UNESCO, 1991), 1,276 pages. This work is one of the most significant contributions UNESCO made to the United Nations Decade of International Law, and of particular relevance here are: (a) Chapter 28, "International law and development", by Mohammed Bennouna, pages 619-632, especially section I.2, "The movement in favour of a new international economic order", page 621; and (b) Part IV, title two, "Community-oriented rights", in its entirety, pages 1167-1244, especially chapter 53, "The right to development", by Mohammed Bedjaoui, pages 1177-1204, and chapter 56, "Future of international law", by Mohammed Bedjaoui and Hubert Thierry, pages 1233-1244.

WORLD HEALTH ORGANIZATION

[Original: English]

[13 April 1992]

Among the principles which should be given priority attention by the working group in charge of developing principles and norms of international law relating to the new international economic order, the World Health Organization would like to propose the following ones:

- The right to health is one of the fundamental human rights of every human being without distinction of race, religion, political belief, economic or social condition;

- There is an international responsibility to transfer basic health and other technology to the less developed countries so they have the capacity to meet the essential needs, aspirations and rights of their population. In this respect, it is important to recall that article 27.1 of the Universal Declaration of Human Rights states that

"Everyone has the right freely ... to share in scientific advancement and its benefits";

- The rights of the patient are part of the right to health and basic human rights of everyone;

- Health-related knowledge should become accessible to all people in a form that increases their self-reliance and capacity to remain healthy. In this respect, it is particularly important to enable vulnerable groups to acquire the economic and health skills and knowledge they need to improve their health status and quality of life;

- Health status must be given an equal place with other major criteria in assessing the quality of development strategies and concern for human health must take a central place in the search for the appropriate balance in development.